

Michael W. Sewright
BURR, PEASE & KURTZ
810 N Street
Anchorage, AK 99501-3293
Telephone: (907) 276-6100
Fax No.: (907) 258-2530
Attorneys for North Star

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA for the use of
NORTH STAR TERMINAL & STEVEDORE
COMPANY, d/b/a Northern Stevedoring &
Handling, and NORTH STAR TERMINAL &
STEVEDORE COMPANY, d/b/a Northern
Stevedoring & Handling, on its own behalf,

Plaintiffs,

and

UNITED STATES OF AMERICA for the use of
SHORESIDE PETROLEUM, INC., d/b/a Marathon
Fuel Services, and SHORESIDE PETROLEUM,
INC., d/b/a Marathon Fuel Services, on its own
behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER
ROCK PRODUCTS, INC.; UNITED STATES
FIDELITY AND GUARANTY COMPANY; and
ROBERT A. LAPORE,

Defendants.

Case No. 3:98-cv-009-HRH

**OPPOSITION AND
CROSS-MOTION TO NUGGET
AND USF&G'S APRIL 28, 2006
MOTION FOR SUMMARY
JUDGMENT AGAINST NORTH
STAR [Clerk's Docket No. 488]**

Defendants Nugget Construction, Inc. (“Nugget”) and United States Fidelity and Guaranty Company (“USF&G”) have moved, once again in this case, for summary judgment against Plaintiff and Use Plaintiff North Star Terminal & Stevedore Company (“North Star”). This time, they direct their motion against state law claims specified in North Star’s Amended Complaint. However, because most of those claims based on Alaska state law were alleged previously, or share elements with North Star’s Miller Act claims, those defendants’ present motion is based pretty much on the same grounds they argued twice before and had denied by this Court twice before. *See* Clerk’s Docket Nos. 124 at pp. 2-5 & 310 at pp. 1-2, 25-26. Once again, those defendants file this particular motion through the law firm of Oles Morrison Rinker & Baker LLP.¹ This time they do so through a 53-page memorandum and about an inch of affidavits and exhibits in purported support. *See* Clerk’s Docket Nos. 488, 489, 490, and 491.

North Star opposes that motion on the facts and law. At the same time, North Star cross-moves for summary judgment against Nugget (and to lesser degree against USF&G),² or at least for determinations of law applicable to this case. This opposition and cross-motion are supported by North Star’s accompanying memorandum and the previous summary judgment

¹ Since November, the Law Office of Barokas Martin & Tomlinson has represented USF&G solely upon the bad faith allegations asserted against that defendant. Oles Morrison Rinker & Baker LLP, which represented both Nugget and USF&G entirely during the eight-year history of this case up to that point, has continued to represent USF&G, as well as Nugget, as to all other claims asserted in this matter against those defendants. *See* Clerk’s Docket No. 418 (Withdrawal, Substitution and Order establishing attorneys of record).

² In their accompanying memorandum (Clerk’s Docket No. 489 at 4), the defendants clarify that their motion is really made on Nugget’s behalf, except “[t]o the extent that North Star asserts state law claims against Nugget’s surety [USF&G].” The only state law claim set out in North Star’s Amended Complaint also asserted against USF&G on which Oles Morrison Rinker & Baker still represent USF&G is the claim for negligence. It is addressed in the accompanying memorandum.

filings of the parties in this case previously considered by the Court in previously denying all of Nugget and USF&G's arguments for summary judgment asserted then and largely repeated and repackaged in the recent above-referenced filings.

Dated at Anchorage, Alaska, on May 17, 2006.

s/ Michael W. Sewright
Burr, Pease & Kurtz
810 N Street
Anchorage, Alaska 99501
Phone: (907) 276-6100
Fax: (907) 258-2530
E-mail: bpk@bpk.com
Alaska Bar No. 7510090

CERTIFICATE OF SERVICE

I certify that on the 17th day of May, 2006, a copy of the foregoing OPPOSITION AND CROSS-MOTION TO NUGGET AND USF&G'S APRIL 28, 2006 MOTION FOR SUMMARY JUDGMENT AGAINST NORTH STAR was served electronically to:

Steven S. Shamburek, Esq.
Traeger Machetanz, Esq.
Paul D. Stockler
Herbert A. Viergutz
C. Patrick Stoll, Esq.

s/ Michael W. Sewright